IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2007

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

Writ Appeal No.2515 of 2002

M/s. India Cements Ltd.,
No.827, Anna Salai,
Chennai 600002. .. Appellant

vs.

1. The State of Tamilnadu,
   rep. by its Commissioner &
   Secretary to Government,
   Industries Department,
   Fort St. George, Chennai-9.

2. The District Forest Officer,
   Erode Division, Erode.

3. The District Collector,
   Salem District, Salem. .. Respondents

Writ Appeal under Clause 15 of Letters Patent against the order dated 5.7.2002 made in Writ Petition No.16230 of 1995 filed under Article 226 of the Constitution of India calling for the records relating to the communication bearing No.Na.Ka.2235/93/V1 dated 11.06.1993 and C.No.2235/93/P1 dated 18.09.1995 on the file of the Second Respondent and quash the said communications.

For Appellant .. Mr. R.Muthukumarasami, S.C.
for K.Kuppusamy
For Respondents .. Mr. R.Thirugnanam
Spl. Govt. Pleader-R1 & R3
Mr. Titus Jesudoss
Spl. Govt. Pleader (Forest-R2)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The correctness of the order of the learned single Judge dated 5.7.2002 made in Writ Petition No.16230 of 1995 refusing to quash the demand made by the District Forest Officer in his proceedings dated 11.6.1993 and 18.9.1995 on the grounds of want of jurisdiction, arbitrary and unreasonable exercise of power, non application of mind as well as lack of privity of contract between the appellant/writ petitioner and the second respondent to raise the impugned demand, is challenged before us in this writ appeal under the following facts and circumstances of the case.

2.1. The genesis of the lis challenging the impugned order is based upon the following undisputed facts.

The Government by G.O.Ms.No.2701, Department of Industries, Labour and Cooperation, dated 22.5.1962, granted a mining lease of limestone and kankar for a period of twenty years over an extent of 8.78 acres in S.No.161/1 and 166 of Chinnagoundanur Village and an extent of 300 acres in S.No.173 of Devagoundanur Village, Sankari Taluk, Salem District, in favour of the appellant/writ petitioner, subject to the conditions provided under Rule 27 of the Mineral Concession Rules, 1960 (hereinafter referred to as "the Rules"), framed under the Mines and Minerals (Development and Regulation) Act, (Act No.67 of 1957) by the Central Government.

2.2. As per Section 22 of the Rules, the mining lease can be granted only on an application for the grant of mining lease in respect of land in which the minerals vest in the Government and such application shall be made to the State Government in Form I and the State Government shall consider such application and grant the mining lease. Rule 22 of the Rules concededly does not have any reference to any particular department of the Government.

2.3. Rule 27 of the Rules prescribes the conditions for granting the mining lease. Sub rule (c) of Rule 27(1) of the Rules contemplates that the lessee shall pay such yearly dead rent at the rates specified in the Third Schedule of the said Act and if the lease permits the workings of more than one mineral in the same area, the State Government shall not charge separate dead rent in respect of each mineral.

2.4. As per Rule 27(1)(d) of the Rules, the lessee shall also pay surface rent and water rate at such rate as may be specified by the State Government in the lease.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.5. It is not in dispute that the appellant/writ petitioner had complied with both the said conditions. On the other hand, by their letter dated 24.11.1980, the appellant/writ petitioner proposed to surrender their mining right over an area of 250 acres out of 300 acres in Suriamalai Reserve Forest, as they are barren lands. As provided under Rule 29 of the Rules, which deals with the restrictions on determination of lease, the appellant/writ petitioner decided to seek for renewal for the rest of 50 acres out of 300 acres in Suriamalai reserved forest. The admitted fact remains that the Government did not renew the lease even for the said 50 acres and as a result, the renewal was deemed to have been rejected statutorily on the expiry of twenty years from 22.5.1962 viz.,on 21st May 1982.

2.6. But, in the meanwhile, the Government by G.O.Ms.No.310, Industries (D) Department, dated 1.3.1988, with reference to the application of the appellant/writ petitioner dated 24.11.1980 referred to above, have accepted the suggestion of the Director of Industries and Commerce for surrender of 250 acres of land out of 300 acres in Suriamalai reserved forest with effect from 24.11.1980 as per Rule 29 of the Rules. That apart, the Collector, Salem, was also requested to send to the Government draft notification and proposals, if considered necessary for notifying the availability of 250 acres surrendered by the appellant/writ petitioner in the Tamilnadu Government gazette for re-grant as required under Rule 59 of the Rules.

2.7. Rule 29(1) provides that the lessee shall not determine the lease except after notice in writing of not less than twelve calendar months to the State Government or to such officer or authority as the State Government may specify in the lease.

2.8. In the instant case, the appellant/writ petitioner has proposed to surrender 250 acres of land as referred to above as early as 24.11.1980 even during the existence of the lease for a period of twenty years from 22.5.1962, which expired on 21.5.1982 and the same was accepted by the State Government in G.O.Ms.No.310 Industries (D) Department, dated 1.3.1988, of course, with retrospective effect from 24.11.1980.

2.9. The second proviso to Rule 29(1) as then in force reads as follows:

> "PROVIDED FURTHER that where a lessee applies for the surrender of the whole or a part of lease-hold area on the ground that such area is barren or the deposits of minerals have since exhausted or depleted to such an extent that it is no longer economical to work in such area, the State Government shall permit the lessee, from the date of receipt of the application, to surrender that area if the following conditions are satisfied, namely:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(a) the leasehold area to be surrendered has been properly surveyed and is contiguous,

(b) the lessee has paid all the dues payable to the Government under the lease up to the date of application."

2.10. In the instant case, concededly, the State Government has rightly permitted the lease to terminate from the date of application i.e. 24.11.1980 in G.O.Ms.No.310, Industries (D) Department, dated 1.3.1988, which reads as follows:

GOVERNMENT OF TAMILNADU
ABSTRACT

Mines and Minerals - Mining Lease - Limestone - Salem District - Sankari Taluk S.No.173 - over an extent of 250.00 acres in Devannagoundanur Village - Held by Tvl.India Cements Limited - Sankari, Salem District - Partial Surrender - Permitted.

INDUSTRIES (D) DEPARTMENT

G.O.Ms.No.310 Dated 1.3.1988

Read again:

G.O.Ms.No.2701: ILC, dated 22.5.1962

Read also:

i. From Tvl. India Cements Limited, Madras-2, Lr.No.Fs/21/ML/4669, dated 24.11.1980.

ii. From the Collector,Salem Lr.Roc. No.1105877/80/12 dated 23.03.1987.

iii. From the District of Industries and Commerce Lr.No.15188/B3/80 dated 26.11.1981.

ORDER:

In the Government Order read above, Tvl. India Cements Limited, Sankari, Salem District, were granted a mining lease for limestone over an extent of 300 acres in S.No.173/3 of Devannagoundanur village, Sankari Taluk, Salem District for a period of 20 years. The connected lease deed was executed on 21.11.1962.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. In their letter read above, Tvl. India Cements Limited have applied for the partial surrender of 250.00 acres out of 300 acres held by the, under lease in S.No.173 of Devannagoundanur village, Sankari Taluk, Salem District on the ground that the area contains thin bands of limestone which are not workable. The said surrender application was received by the Collector, Salem on 24.11.1980. The Collector, Salem, has forwarded the surrender application of Tvl. India Cements Limited to the Government to pass suitable orders. The Director of Industries and Commerce has suggested that the surrender proposal of Tvl. India Cements Limited may be accepted under Rule 29(1) of Mineral Concession Rules, 1960, with effect from 24.11.1980. The Government accepted the recommendation of the Director of Industries and Commerce.

3. Under Rule 29 of the Mineral Concession Rules 1960, the Government permit Tvl. India Cements Limited, Sankari, Salem District to surrender 250.00 acres out of 300 acres granted to them under mining lease in the Government Order read above with effect from 24.11.1980, the date of receipt of surrender application in the office of the Collector, Salem.

4. The Collector, Salem is requested to take necessary further action in the matter. He is requested to collect the mining dues from the company after adjusting the security deposit remitted by it. He is also requested to take necessary action as per the orders in force in respect of local cess and local cess surcharge payable by the lessee company. The Collector, Salem is also requested to send to Government draft notification and proposals if considered necessary for notifying the availability of 250.00 acres surrendered by the company in the Tamilnadu Government Gazette for regrant as required under Rule 59 of the Mineral Concession Rules, 1960.

(emphasis supplied)

(BY ORDER OF THE GOVERNOR)

P. SHANKAR
Commissioner & Secretary to Govt.

2.11. It is therefore evident that the lessee had fully satisfied conditions (a) and (b) referred to in the second proviso to Rule 29(1) of the Rules viz., (a) leasehold area to be surrendered has been properly

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

surveyed and (b) the lessee has paid all the dues payable to the Government under the lease up to the date of application and that the Government has accepted the surrender of lease with effect from 24.11.1980, viz., the date of application for surrender made by the appellant/writ petitioner.

2.12. That apart, in the instant case, the appellant/writ petitioner had paid dead rent till 1985 even after the expiry of the lease period in the year 1982 for the reasons that the Government had not passed any orders for the renewal of 50 acres of land and for the surrender of 250 acres of land as requested by them in the letter dated 24.11.1980.

2.13. After acceptance of surrender by the Government by G.O.Ms.No.310, Industries (D) Department, dated 1.3.1988, with effect from 24.11.1980, the appellant/writ petitioner applied for the grant of surface right over an extent of one hectare viz., 2.50 acres on payment of annual rent fixed by the Government as they were keeping their machineries in the said land, which was also admittedly surrendered on 1.3.1994.

2.14. Misconstruing the said surface right over an extent of one hectare of land on payment of annual rent to the Government contrary to G.O.Ms.No.310, Industries (D) Department dated 1.3.1988, the second respondent by his proceedings dated 11.6.1993 raised a demand for a sum of Rs.24 lakhs towards the arrears of alleged dead rent.

2.15. On receipt of the said demand dated 11.6.1993, the appellant/writ petitioner by detailed letters dated 26.2.1994 and 31.3.1995 explained that there was no due from the appellant/writ petitioner to the State Government much less to the second respondent-forest department with whom there was no privity of contract and that the entire dues payable to the Government was concededly settled through the Industries Department as evident from G.O.Ms.No.310, Industries (D) Department, dated 1.3.1988 itself, as the appellant/writ petitioner had also obtained "no due certificate" from the Collector, Salem.

2.16. Not satisfied with the said explanation, the second respondent again by their letter dated 18.9.1995 required the appellant/writ petitioner to settle the alleged arrears of dead rent to the tune of Rs.24 lakhs, which necessitated the appellant/writ petitioner to file the above writ petition seeking a writ of Certiorari to call for the records relating to the communication bearing No.Na.Ka.2235/93/01 dated 11.6.1993 and C.No.2235/93/D1 dated 18.9.1995 on the file of the second respondent and quash the said communications.

3. Submissions were made by both sides on the above admitted facts.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. However, the learned single Judge by his order dated 5.7.2002, taking note of the contents in the letters dated 28.11.1989 and 9.12.1991 written by the appellant/writ petitioner, dismissed the writ petition. Hence, the above appeal.

5.1. In this regard, it is apt to extract both the letters written by the appellant/writ petitioner dated 28.11.1989 and 9.12.1991 for proper appreciation of the same.

28.11.1989.

The District Forest Officer,
Erode.

Sir,

Sub: Forests-Lease of Forest land in
Suriyamalai Reserve Forest vide
G.O.No.2701 (ILC) dated 22.5.1962.

Ref: Your letter No.Roc.7070/88
dated 7.11.1989.

With reference to the above, kindly find enclosed herewith a Statement showing the royalty, dead rent and surface rent paid in respect of G.O.No.2701 dated 22.5.1962 from 1964 to 1985 as per the demands received from the Collector, Salem. In this connection, we would like to inform you that similar details were already furnished to your Salem office upto 1979 after receiving a letter from District Forest Officer, Salem (copies are enclosed).

Since no demand has been received from the Collector, Salem, the dead rent or surface rent has not been paid from 1985 onwards in respect of G.O.No.2701 and as on date we have paid all the dues to the Government and duly obtained "No Due Certificate" from the Collector, Salem.

2. Regarding surface right over an extent of 1 hec. (2.5 acres) in S.F.No.173 of Suriyamalai Reserve Forest, we hereby give our consent to pay the annual rent fixed by the Forest Department/Government.

3. Regarding surrender of lands we would like to inform you that we were granted mining lease over an extent of 308.78 acres in Chinnagoundanur and Devannagoundanur (Suriyamalai Reserve Forest) Villages of Sankari Taluk, Salem District, for a period of 20 years vide G.O.No.2701 dated 25.2.1962. Out of this 308.78 acres 300 acres are in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Devannagoundanur Village covering under S.F.No.173 (Suriyamalai Reserve Forest). Though this 300 acres in Suriyamalai Reserve Forest is barren and devoid of any limestone deposit, mining lease was obtained for 300 acres, only to have our explosives magazine and to have safety distance around our magazine.

Later mining lease over an extent of 250 acres out of 300 acres in Suriyamalai was surrendered vide our letter dated 24th November 1980. While surrendering the mining lease over an extent of 250 acres, we also requested the Government to grant surface right over the area (2.5 acres) for safety distance around our explosives magazine. After processing, the State Government has permitted surface right over an extent of 1 hec. (2.5 acres) only instead of 250 acres requested on payment of annual rent fixed by the Forest Department/Government. The surrender of mining lease over an extent of 250 acres in Suriyamalai Reserve Forest area is also duly approved by the Government vide their G.O.Ms.No.310 dated 1.3.1988 (a copy enclosed).

The renewal of mining lease over an extent of 50 acres in Suriyamalai area is still pending with the Government and is likely to be renewed shortly. The surface right over an extent of 1 hec.(2.5 acres) has already been approved. Therefore we would like to surrender the balance area of 247.50 acres to Bargoor Forest Division.

Kindly intimate us the procedure that are to be adopted for surrendering the above 247.50 acres to Bargoor Forest Division.

We trust the above is in order.

Sd/-.

The letter dated 9.12.1991 reads as follows:

The District Forest Officer,
Erode Division,
Erode - 3.

Sir,

Sub: Surrender of 297.50 acres of Suriyamalai Reserve Forest land in Devannagoundanur Village - Sankari Taluk, Regarding.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Ref: The District Forest Officer - Erode -
Letter No.Roc:7070/88/L dated 19.11.1991

With reference to your above letter, we have handed over 297.50 acres in Suriyamalai Reserve Forest to the Range Office of your Mettur Division on 2.12.1991. We are

retaining 2.50 acres (1hect) on surface lease for our present explosive magazine and its approach road as per your letter.

Thanking you,

sd/."

5.2. From a careful reading of the above letters particularly in the context of G.O.Ms.No.310, Industries (D) Department dated 1.3.1988, in the light of Rule 29 of the Rules, which deals with the restrictions on determination of the lease, particularly second proviso to Rule 29(1) referred to above, we can arrive at the following findings:

(i) In the letter dated 28.11.1989, the writ petitioner/appellant only re-emphasised their request for grant of surface right over an area of 2.50 acres in S.F.No.173, Suriyamalai Reserve Forest for safety distance around their explosive magazine, because in the same letter, the appellant has stated that the surrender of mining lease over an extent of 250 acres in Suriyamalai reserve forest was also duly approved by the Government vide their G.O.Ms.No.310, dated 1.3.1988.

(ii) As per Rule 29, termination of the lease takes place with effect from the date of application and both the conditions provided in the second proviso to Rule 29(1) had been duly complied with, viz., the leasehold area was properly surveyed and the lessee had paid all the dues.

5.3. If that be so, the statement made by the appellant/writ petitioner in their letter dated 9.12.1991 that they have surrendered 297.50 acres of land on 2.12.1991 and that they were retaining 2.5 acres on surface lease, by itself, would not confer any right on the second respondent to raise the impugned demand as it is a settled position of law that there cannot be estoppel against any statute. In the instant case, the second proviso to Rule 29(1) of the Rules provides that the surrender takes place from the date of the application. In fact, the Government, while passing G.O.Ms.No.310, Industries (D) Department, dated 1.3.1988, on the application made by the appellant on 24.11.1980 to terminate the lease, specifically accepted the surrender proposal with effect from 24.11.1980. In a republic governed by the rule of law, no one high or low,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. The Government cannot claim immunity from the doctrine of estoppel, nor it can say that it is under no obligation to act in a manner contrary to the second proviso to Rule 29(1) of the Rules, much less to the G.O.Ms.No.310, Industries (D) Department, dated 1.3.1988 accepting the surrender from the date of application, viz., 24.11.1980. This aspect of the case was, unfortunately, not properly put forth before the learned single Judge for his appreciation. Therefore, we are of the considered view that the demand raised by the second respondent, who has no privity of contract with the appellant/writ petitioner, is without jurisdiction and the impugned demand is, therefore, arbitrary and unreasonable.

Hence, the order of the learned single Judge is set aside and the writ appeal is allowed. Consequently, the impugned demand of the second respondent stands quashed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Commissioner &
   Secretary to Government,
   State of Tamilnadu,
   Industries Department,
   Fort St. George, Chennai-9.

2. The District Forest Officer,
   Erode Division, Erode.

3. The District Collector,
   Salem District, Salem.

1 cc To The Government Pleader, SR.39821, 39842.

W.A.No.2515 of 2002

JRG(CO)
RVL 13.06.2007

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/